

GAO

Report to the Chairman, Committee on
the Budget, House of Representatives

May 2000

BUDGET ISSUES

Budget Enforcement Compliance Report



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Abbreviations

BEA	Budget Enforcement Act of 1990
BEA-97	Budget Enforcement Act of 1997
CBO	Congressional Budget Office
DCA	Deficit Control Act
EITC	Earned Income Tax Credit
GRH	Gramm-Rudman-Hollings

Contents

OBRA 93	Omnibus Budget Reconciliation Act of 1993
OMB	Office of Management and Budget
PAYGO	pay-as-you-go
SCHIP	State Children's Health Insurance Program
TEA-21	Transportation Equity Act for the 21st Century
VA	Department of Veterans Affairs



United States General Accounting Office
Washington, D.C. 20548

Accounting and Information
Management Division

B-285122

May 31, 2000

The Honorable John R. Kasich
Chairman
Committee on the Budget
House of Representatives

Dear Mr. Chairman:

This report responds to your request that we assess compliance by the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) with the requirements of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended (the Deficit Control Act). Our assessment covers OMB and CBO reports issued for legislation enacted during the 1st session of the 106th Congress, which ended on November 22, 1999.

According to CBO's *Final Sequestration Report* issued on December 2, 1999, discretionary outlays for all spending categories combined are estimated to exceed the spending limits by \$16.6 billion for fiscal year 2000. CBO estimated that a 4 percent sequestration would be required for the Overall Discretionary category. In contrast, OMB's *Final Sequestration Report*, issued on January 25, 2000, estimated that no sequestration of discretionary spending will be required for fiscal year 2000. Since by law OMB's estimates are controlling, there will be no sequester in fiscal year 2000.

Background information on the budget enforcement process, the various reports required by the act, and details concerning our scope and methodology are discussed in appendix I.

Our work was conducted in Washington, D.C., from August 1999 through May 2000 in accordance with generally accepted government auditing standards. We provided a draft of this report to OMB and CBO officials for their review and comment. OMB and CBO officials agreed with our presentation of their views and the facts as presented. We incorporated their comments where appropriate.

Results in Brief

Overall, we found that OMB and CBO substantially complied with the act. However, some of the required OMB reports were issued late. This issue is discussed further in appendix II. The Deficit Control Act (DCA) sets a specific timetable for issuance of OMB reports. By law, OMB must issue sequestration reports at three specific times during the calendar year: (1) the preview report when the President submits his budget, (2) the update on August 20, and (3) the final report 15 days after the end of a congressional session.¹ OMB issued its fiscal year 2000 *Sequestration Update Report* on August 25, 1999—5 days late. Its final sequestration report for fiscal year 2000 was issued on January 25, 2000—49 days later than the required date of December 7, 1999. The extremely late issuance of OMB's final report resulted in the late issuance of CBO's fiscal year 2001 *Sequestration Preview Report*. DCA requires that CBO issue a sequestration preview report for the coming fiscal year 5 days before the President submits his budget to the Congress. This report contains updated estimates of discretionary spending limits based on adjustments set forth in law and an estimate of any net increase or decrease in the deficit or surplus caused by entitlement or revenue legislation enacted. CBO uses the discretionary spending limits (caps) included in OMB's *Final Sequestration Report* as the starting point for the adjustments that it publishes in its *Preview Report*. Because OMB's final sequestration report for fiscal year 2000 was issued so late (49 days later than required), CBO did not have the data needed to use as the starting point to update its estimates for fiscal year 2001 and issue its report in a timely manner. This in turn meant that OMB did not have CBO's published adjustments to include in the OMB fiscal year 2001 *Preview Report*, published in the President's budget, which was issued in February 2000.

As has been the case for the past 3 fiscal years, OMB issued most of its fiscal year 2000 scorekeeping reports late. For fiscal year 2000, OMB issued a total of 4 discretionary scorekeeping reports (covering 11 pieces of enacted legislation) and 13 pay-as-you-go (PAYGO) reports.² Of these 17 reports, all but one (a PAYGO report) were issued later than the time specified by law. The law requires that these reports be issued 7 working days after enactment of the relevant piece of legislation. On average, the

¹CBO has similar reporting requirements.

²Although CBO issued scorekeeping reports on 53 PAYGO bills enacted during this session of Congress, OMB elected to no longer issue PAYGO scorekeeping reports for legislation where OMB and CBO estimate zero or negligible budget impact.

fiscal year 2000 discretionary spending reports were 39 working days late and the PAYGO reports were 7 working days late. OMB's timeliness on these reports has continued to be a problem. Excluding final sequestration reports, 94 percent of the fiscal year 2000 reports were late; 83 percent of the fiscal year 1999 reports were late; 50 percent of the 1998 reports³ were late; and about 70 percent of the 1997 reports were late.⁴

The extremely late issuance of OMB's final sequestration report could have had an impact on the report's usefulness for its original purposes. For example, if a sequestration had been required for fiscal year 2000 based upon OMB's estimates of the budgetary effects of enacted legislation, the sequester could not have begun until near the end of January 2000—several months into the fiscal year—which would have magnified the effect of the sequestration for the remaining months.

As you requested, we also looked at implementation issues. We further discuss in appendix III three areas in which CBO and OMB differ on (1) appropriations scoring, (2) PAYGO scoring, and (3) discretionary spending cap adjustments. In fiscal year 2000, as in fiscal year 1999, the emergency designation was used more broadly than had been the case in previous years. This is discussed in appendix IV.

CBO and OMB differed substantially on the scoring treatment of H.R. 3425, the Miscellaneous Appropriations Act, 2000. The scoring differences resulted from different applications of the directed scoring provision contained in the act. CBO interpreted the scoring direction as requiring that all of the act's provisions be scored as PAYGO, resulting in \$7.3 billion of PAYGO savings. OMB, in an attempt to reflect the budget agreement the administration had negotiated with congressional leadership, scored only some of the provisions as PAYGO and others as offsets to discretionary spending, reducing discretionary outlays by \$9.5 billion and increasing PAYGO spending by \$35 million.

³Reports issued in fiscal year 1998 were governed by two different criteria. Those issued before August 5, 1997, were required to be issued within 5 calendar days of enactment. Those issued after that date were required to be issued within 7 working days of enactment. Nearly 78 percent of the reports issued before the change in criteria were late compared with 48 percent issued after the change in criteria.

⁴OMB attributes the increased delay to the concentration of legislation at the end of the session. Both the lateness of appropriations action and the size of the bills enacted late in the year means that reports come due during the budget crunch period. This factor was cited in previous years as well.

CBO and OMB also differed substantially in scoring other appropriation acts. We identified a total of 456 scoring differences between CBO and OMB in either budget authority or outlays. However, most of these differences were small, with nearly 75 percent less than \$100 million and fewer than 7 percent greater than \$500 million. Of the 31 differences greater than \$500 million, 19 were due to long-standing differences in the way CBO and OMB treat contingent emergencies.⁵ The remaining differences were due to different DCA categorization, different estimates of Highway and Mass Transit spending, different outlay rate estimates, and different estimates of the rate of receipts.

CBO and OMB differed substantially in PAYGO scoring of three pieces of enacted legislation. CBO and OMB differed in their estimates of the impact of the provisions contained in the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 by about \$1 billion. CBO estimated that the provisions of the Veterans Millenium Health Care and Benefits Act would cost about \$1.2 billion over the 5-year period 2000–2004 whereas OMB estimated that the legislation would cost \$96 million over the same period. CBO estimated the cost of the Ticket to Work and Work Incentives Improvement Act of 1999 at \$15.5 billion from 2000 through 2004, while OMB estimated the costs at \$17.9 billion over the same period.

To assess compliance with the Deficit Control Act, we reviewed OMB and CBO reports issued under the act to determine if they complied with all of the act's requirements. To accomplish this, we reviewed the OMB and CBO preview, update, and final sequestration reports to determine if they reflected all of the technical requirements specified in DCA, such as (1) estimates of the discretionary spending limits, (2) explanations of any adjustments to the limits, (3) estimates of the amount of net deficit increase or decrease, and (4) the sequestration percentages necessary to achieve the required reduction in the event of a sequester. In addition we reviewed the scorekeeping reports issued by OMB and CBO to (1) identify major scoring differences and (2) determine the timeliness of the reports.

We are sending copies of this report to The Honorable Jacob J. Lew, Director, Office of Management and Budget; The Honorable Dan Crippen, Director, Congressional Budget Office; Representative John Spratt,

⁵In OMB's sequestration *Preview Report*, issued February 7, 2000, OMB reported that it plans to change its scoring of budget authority for contingent emergency appropriations to be consistent with congressional scoring practice.

Representative C.W. Bill Young, Representative David R. Obey, Senator Pete V. Domenici, Senator Frank R. Lautenberg, Senator Ted Stevens, and Senator Robert Byrd in their capacities as Chair or Ranking Minority Member of Senate and House Committees. Copies will be made available to other interested parties on request. Please contact me at (202) 512-9142 if you or your staff have any questions. Major contributors to this report are listed in appendix V.

Sincerely yours,

A handwritten signature in cursive script that reads "Susan J. Irving". The signature is written in dark ink and is positioned above the typed name.

Susan J. Irving
Associate Director, Budget Issues

Background and Scope and Methodology

DCA,¹ as amended, established statutory limits on federal government spending for fiscal years 1991 through 2002 by creating

- annual adjustable dollar limits (spending caps) on discretionary spending funded through the regular appropriations process,
- a pay-as-you-go (PAYGO)² requirement for direct spending³ and receipts legislation, and
- a sequestration⁴ procedure to be triggered if (1) aggregate discretionary appropriations enacted for a fiscal year exceed the fiscal year's discretionary spending caps or (2) aggregate PAYGO legislation is estimated to increase the combined current and budget year deficits.

To track progress against the budget enforcement requirements and to implement any needed sequestration, DCA requires CBO and OMB to score (estimate) the budgetary effects of each appropriation action and each piece of PAYGO legislation. As soon as practicable after the Congress completes action on an appropriation or on PAYGO legislation, CBO is required to report to OMB the estimated amount of new budget authority and outlays provided by the legislation. Within 7 working days after an appropriation or PAYGO legislation is enacted, OMB must report its estimates for these amounts, using the same economic and technical assumptions underlying the most recent budget submission. It must also include the CBO estimates and explain any differences between the two sets of estimates. If there are significant differences between the OMB and CBO estimates, OMB is required to consult with the budget committees prior to issuing its scoring report.

¹The Balanced Budget and Emergency Deficit Control Act of 1985 as amended by the Budget Enforcement Act of 1990 (BEA), the Omnibus Budget Reconciliation Act of 1993 (OBRA 93), and the Budget Enforcement Act of 1997 (BEA-97). In addition to being known as the Deficit Control Act, it is sometimes called Gramm-Rudman-Hollings or GRH. It is also referred to as BEA since that legislation amended GRH in 1990 by adding the current discretionary spending caps and PAYGO procedures.

²DCA requires that the aggregate effect of new legislation that increases direct spending or decreases receipts be deficit neutral (that is, not increase the deficit). Such legislation is often referred to as PAYGO legislation. OMB and CBO have interpreted the PAYGO requirement as applying to surpluses as well; the aggregate effect of new legislation must not decrease the surplus.

³Direct spending (commonly referred to as mandatory spending) means entitlement authority, the food stamp program, and any budget authority provided by laws other than in appropriation acts.

⁴Sequestration is the cancellation of budgetary resources.

DCA also requires CBO and OMB to submit a series of three sequestration reports at specified times during each year, as shown in table 1. CBO and OMB reports include a discretionary sequestration report that adjusts the discretionary spending caps and a PAYGO sequestration report that displays the net decrease or increase in the deficit or surplus for enacted PAYGO legislation. Because OMB's reports control for purposes of sequestration, CBO uses estimates from OMB's most recent sequestration report as the starting point for each of its reports.

Table 1: Sequestration Reports and Due Dates

Report	Due date	
	CBO	OMB
Preview report	5 days before President's budget submission	President's budget submission
Update report	August 15	August 20
Final report	10 days after end of congressional session	15 days after end of congressional session

Discretionary Spending Limits

Annual discretionary spending limits for budget authority and outlays are set forth in the Deficit Control Act. The Budget Enforcement Act of 1997 amended DCA to establish three separate categories of discretionary spending for 1998 and 1999: defense, nondefense excluding violent crime reduction spending, and violent crime reduction spending. For fiscal year 2000, defense and nondefense are combined, resulting in two categories—violent crime reduction spending and all other discretionary spending.⁵ For 2001 and 2002 these are combined into a single category. The Transportation Equity Act for the 21st Century (TEA-21)⁶ altered the spending cap structure by establishing two new outlay caps that apply separately to highway and mass transit programs for 1999 and continue through 2003. (See table 2.) Since these programs had been included under the nondefense cap, the nondefense cap for 1999 and the Overall

⁵CBO refers to the spending category that encompasses all other discretionary spending as "Overall Discretionary" while OMB refers to it as "Other Discretionary."

⁶Title VIII of TEA-21 (P.L. 105-178, enacted June 9, 1998) amended DCA to add these two new caps. These caps continue for 2003 even though DCA caps only exist through 2002.

Discretionary caps for 2000, 2001, and 2002 were reduced. Because the new caps on highway and mass transit outlays exceed the reductions in the other caps by about \$15.4 billion, the amount of total discretionary outlays permitted under all of the caps has been increased for each year from 1999 through 2002.

Table 2: Discretionary Spending Categories by Fiscal Year

1998	1999	2000	2001	2002
Violent Crime Reduction	Violent Crime Reduction	Violent Crime Reduction	Overall Discretionary	Overall Discretionary
Defense	Defense	Overall Discretionary		
Nondefense	Nondefense			
	Highway	Highway	Highway	Highway
	Mass Transit	Mass Transit	Mass Transit	Mass Transit

Note: The Highway and Mass Transit categories were formerly included in the nondefense category.

DCA provides that adjustments be made to the discretionary limits for certain specified reasons. The limits must be adjusted for (1) changes in concepts and definitions, (2) emergency appropriations, (3) funding for continuing disability reviews, (4) funding for International Monetary Fund (IMF) increases, (5) international arrearages funding, (6) the earned income tax credit compliance initiative, and (7) a special outlay allowance to cover technical scoring differences between OMB and CBO. In addition to adjustments to the limits required by DCA, TEA-21 added adjustments for the two transportation caps. It requires that OMB adjust the highway spending caps in each year's sequestration *Preview Report* to reflect differences between current and future estimates of revenues that will be credited to the Highway Trust Fund. It also requires that both transportation caps be adjusted each year to reflect any changes in technical estimates of the outlays that will result from the TEA-21 funding levels.

The spending limits are to be enforced by sequestration should budget authority or outlays exceed the statutory limits. CBO reported in its *Final Sequestration Report* that total discretionary outlays for all categories combined are estimated to exceed the adjusted caps by \$16.6 billion for

fiscal year 2000. CBO estimated that this would require a sequestration of about 4 percent of budget authority for the Overall Discretionary category.⁷ In contrast, OMB's final sequestration report estimated that no sequestration of discretionary funding would be required for fiscal year 2000. Since by law OMB's estimates control for purposes of sequestration, there will be no sequester in fiscal year 2000.

In addition, the law specifies that for a fiscal year in progress, if an appropriation enacted between end-of-session adjournment and July 1 of that fiscal year causes any of the spending limits for the year in progress to be exceeded, CBO and OMB must issue within-session sequestration reports 10 and 15 days, respectively, after enactment. On the same day as the OMB report, the President must issue an order implementing any sequestrations set forth in the OMB report. No within-session sequestration reports were required for fiscal year 1999.

Pay-As-You-Go Enforcement

PAYGO enforcement covers all direct spending and receipts legislation. CBO and OMB maintain a "scorecard" showing the cumulative deficit/surplus effect of PAYGO legislation to track progress against the PAYGO requirements. If, at the end of a congressional session, cumulative legislated changes enacted in direct spending and receipts result in a net cost, a sequester of nonexempt direct spending programs is required to offset the cost. When determining the need for sequestration the estimates for the budget year and those for the current year that were not included in the final sequestration report for the current year are combined. Effective on its enactment, BEA-97 set the scorecard balance to zero for the then-current year and for each subsequent year through fiscal year 2002. This prevented any net savings achieved by legislation enacted prior to the enactment of BEA-97 from being used to offset deficit-increasing legislation enacted through 2002. The Consolidated Appropriations Act, 2000 (P.L. 106-113) required OMB to reset the PAYGO scorecard to zero on January 3, 2000. Although the BEA expires in 2002, the sequestration procedure applies through 2006 to eliminate any projected net costs stemming from PAYGO legislation enacted through fiscal year 2002.

⁷Had CBO scored certain provisions contained in H.R. 3425 as discretionary offsets rather than as direct spending, the required sequestration would have been 3 percent. See discussion in appendix III on Scoring of H.R. 3425, the Miscellaneous Appropriations Act, 2000.

In their final sequestration reports, both OMB and CBO calculate the net change in the deficit or surplus due to PAYGO legislation. However, the OMB report is the sole basis for determining whether any end-of-session sequestration is required. If OMB determines that sequestration is required, the President must issue an order implementing it. For fiscal year 2000, both CBO's report, issued December 2, 1999, and OMB's report, issued January 25, 2000, concluded that a PAYGO sequester was not needed.

Changes to the Deficit Control Act Proposed by the Administration

In OMB's fiscal year 2001 *Preview Report*, the administration proposed several changes to DCA.⁸ Although the administration has not yet proposed legislation to make these changes, the *Preview Report* suggested that the following proposals could be forthcoming.

- **Revision and extension of discretionary spending caps:** The administration proposed to revise and extend the discretionary spending caps through 2010. Beginning in fiscal year 2001, the caps would be revised to "reflect the cost of maintaining the operation of the Federal Government at currently enacted levels into the future." The administration's proposed changes to the discretionary caps would increase discretionary spending at about the same pace as inflation. The proposals would also reinstate the inflation adjustment, included in the original BEA of 1990 in which higher than expected inflation permitted the caps to be adjusted upward.
- **New discretionary spending category:** The administration would permit the highway and mass transit spending caps to expire in fiscal year 2003, as currently provided in law. However, in fiscal year 2001 a new discretionary spending category and an associated cap would be established for the Lands Legacy initiative.
- **New technical spending cap adjustment:** The administration proposed a new technical cap adjustment for section 8 housing contract renewals, which it described as consistent with the existing DCA adjustment to the discretionary baseline.
- **Extension of PAYGO rules:** The administration also proposed to extend the PAYGO enforcement system to fiscal year 2010.
- **Restoration of budgetary conventions:** The administration proposed a restoration of "traditional budgetary treatment" for certain items where "appropriations departed from budgetary conventions." The first

⁸*Budget of the United States Government, Fiscal Year 2001, Analytical Perspectives*, February 7, 2000.

such proposal is to replace certain fiscal year 2001 advance appropriations with full, up-front funding in fiscal year 2000. Second, the administration proposes to reverse several obligation delays and timing shifts that would otherwise delay several spending items until fiscal year 2001. Since the administration has not formally proposed legislation to make these adjustments, it is unclear how these adjustments would be made and what effect they would have on the discretionary spending caps in either fiscal year 2000 or 2001.

Changes in OMB's Budget Scoring

After consulting with the congressional budget committees and the Congressional Budget Office, OMB agreed to make two changes to budget scoring and to adjust the discretionary spending caps accordingly. The first change concerns receipts from purchase power and wheeling activities associated with the Department of Energy's power marketing administrations. These receipts have been reclassified from mandatory to discretionary. Because scoring these receipts as discretionary reduces net discretionary budget authority and outlays, the spending caps will be reduced by approximately \$60 million in both fiscal years 2001 and 2002.

The second change has to do with scoring for contingent emergency appropriations.⁹ When the Congress designates an appropriation as a contingent emergency, the funds are not available for obligation until the President designates the appropriation as an emergency as well. In the past, OMB scored contingent emergency appropriations when the President designated them as "emergency requirements" and then increased the discretionary spending caps by the budget authority made available and the estimated outlays. In its fiscal year 2001 *Preview Report*, OMB stated that it will follow the CBO practice and score budget authority for these items after the Congress has completed action on those items; it will score outlays when the President releases the funds.

Scope and Methodology

To determine whether the OMB and CBO reports complied with the requirements of DCA as amended by BEA and other legislation, we reviewed the OMB and CBO preview, update, and final sequestration reports to determine if they reflected all of the technical requirements

⁹In its fiscal year 2001 *Preview Report*, OMB adjusted its scoring of the 2000 appropriations acts and the resulting discretionary spending caps to conform with this change.

specified in DCA, such as (1) estimates of the discretionary spending limits, (2) explanations of any adjustments to the limits, (3) estimates of the amount of net deficit increase or decrease, and (4) the sequestration percentages necessary to achieve the required reduction in the event of a sequester.

We reviewed legislation dealing with budget enforcement, including DCA, as amended, TEA-21, and the Consolidated Appropriations Act, 2000. We reviewed appropriations acts enacted during the first session of the 106th Congress—the two supplemental emergency appropriations for fiscal year 1999, the seven continuing appropriations measures, the eight separately enacted regular appropriations for fiscal year 2000, and the five appropriations bills included in the Consolidated Appropriations Act, as well as all applicable OMB and CBO appropriations scoring reports issued as of January 3, 2000. We also examined the OMB and CBO PAYGO scoring reports for mandatory spending and receipts legislation. We compared each OMB and CBO report and obtained explanations for differences of \$500 million or more in estimates for the PAYGO reports. For discretionary spending, we compared OMB and CBO scoring reports and obtained explanations for differences of \$500 million or more in budget authority or outlay estimates. We examined OMB and CBO adjustments to the discretionary spending limits for the preview, update, and final sequestration reports. We also examined appropriations scoring reports for patterns in reasons for differences between OMB and CBO, irrespective of the dollar amounts. During the course of our work, we also interviewed OMB and CBO officials.

Our work was performed in Washington, D.C., from August 1999 through May 2000, in accordance with generally accepted government auditing standards. We provided a draft of this report to OMB and CBO officials for their review and comment. OMB and CBO officials agreed with our presentation of their views and the facts as presented. We incorporated their comments where appropriate.

Compliance Issues

The only compliance issues we found related to the timing of required reports: (1) OMB issued both the update and final sequestration reports later than the law requires and (2) OMB issued most of its scorekeeping reports late. Each of these issues is discussed in more detail below.

OMB Issued Sequestration Reports Late

DCA sets a specific timetable for issuance of OMB reports, as shown in table 3.¹

Table 3: Timing of OMB Sequestration Reports

Report	Date
Preview report	With President's budget (first Monday in February)
Update report	August 20
Final report	15 days after the end of the congressional session

OMB met the timing requirement only for the *Preview Report*. The *Sequestration Update Report* was issued 5 days late on August 25, 1999. The *Final Sequestration Report* was issued 49 days late on January 25, 2000 (more than 2 months after the end of the congressional session). The extremely late issuance of OMB's *Final Report* resulted in the late issuance of CBO's fiscal year 2001 *Preview Report*. As a result, OMB's 2001 *Preview Report* did not include CBO's published adjustments.

DCA requires that CBO issue a sequestration preview report 5 days before the President submits his budget to the Congress. This report contains updated estimates of discretionary spending limits based on adjustments set forth in law and an estimate of any net increase or decrease in the deficit or surplus caused by entitlement or revenue legislation enacted. As stated above, on the same day the President submits his budget to the Congress, OMB is required to issue its sequestration preview report. The OMB report contains the same information as the CBO report along with an explanation of any differences between its estimates and those of CBO. CBO uses the discretionary spending limits (caps) included in OMB's final report as the starting point for the adjustments CBO publishes in its *Preview Report*. Because OMB's *Final Report* for fiscal year 2000 was

¹CBO has similar reporting requirements.

issued 49 days later than required, CBO did not have the data needed to use as the starting point to update its estimates for fiscal year 2001 and so was forced to delay the issuance of its report later than the deadline. As a consequence of this, OMB's 2001 *Preview Report*, published in the President's budget, did not include CBO's published adjustments for fiscal year 2001.²

OMB has issued late sequestration reports in past years also. In our report covering fiscal year 1999 compliance, we reported that OMB issued its *Final Report* 35 days late (50 days after the end of the congressional session).³ One of the factors that contributed to the late issuance in that case was the conflicting requirements of DCA. If OMB had issued its report on the required date, the report would have excluded the impact of numerous pieces of legislation—legislation that either the President had not signed before DCA's 15-day deadline or for which scorekeeping reports had not been issued.⁴ We reported a similar situation in our report covering fiscal year 1997 compliance when OMB delayed the *Final Report* in order to include all enacted legislation.⁵ However, OMB has not always delayed its final report in order to include all enacted legislation. In our report covering fiscal year 1998 compliance, we reported that because OMB issued the *Final Report* several days before the statutory deadline it did not include several pieces of enacted legislation in the *Final Report*.⁶ That year, as permitted by DCA, the PAYGO effect of these provisions was simply carried over to the *Preview Report* for the following year.

²OMB attributed the delay in issuing its *Final Report* for fiscal year 2000 to the lateness of legislation, leading to a situation in which many of its scorekeeping reports were due during its busiest time of the year—when it was preparing the President's budget. As discussed in appendix I, OMB is supposed to issue these reports within 7 working days after an appropriation or PAYGO legislation is enacted. Because the final sequestration report covers all legislation enacted during a congressional session, late scorekeeping reports can affect its timing as well. According to OMB, the lateness of appropriation action and the magnitude of legislation enacted at the end of the year caused it to miss its reporting deadline.

³*Budget Issues: Budget Enforcement Compliance Report* (GAO/AIMD-99-100, April 1, 1999).

⁴Although the President is required to act on legislation 10 days, except Sundays, after it is presented to him by the Congress, there can be delays between final congressional action and when the measure is formally presented to the President for signature.

⁵*Budget Issues: Budget Enforcement Compliance Report* (GAO/AIMD-97-28, January 16, 1997).

⁶*Budget Issues: Budget Enforcement Compliance Report* (GAO/AIMD-98-57, January 23, 1998).

The extremely late issuance of OMB's *Final Report* for fiscal year 2000 could have had an impact on the report's usefulness for its original purposes and intent. If OMB's *Final Report* shows that a sequestration is required, a presidential order must be issued the same day the OMB report is issued. DCA envisions this to be 15 days after the end of a session of Congress—usually relatively close to the beginning of the fiscal year. However, because OMB's final report for fiscal year 2000 was issued in January 2000, if the budgetary effects of enacted legislation had necessitated a sequester for fiscal year 2000, the sequestration would have begun in late January 2000—more than one quarter into the fiscal year. This would have left only 8 months remaining in the fiscal year for agencies to implement the sequester, thus magnifying the effect of any sequestration on agencies that are already hard pressed to deal with static appropriation levels.

OMB Issued Scoring Reports Late

Sections 251 and 252 of DCA require OMB to issue scorekeeping reports for all enacted appropriation and PAYGO legislation within 7 working days of enactment. OMB issued 4 discretionary scorekeeping reports (covering 11 pieces of enacted legislation)⁷ and 13 PAYGO reports. Of these 17 reports, 16 were issued later than the time required by law. On average, the fiscal year 2000 discretionary spending reports were issued 39 working days late and the PAYGO reports were issued 7 working days late. The one report issued on time was a PAYGO report.

Compared to previous fiscal years, a higher percentage of fiscal year 2000 reports was issued late. Table 4 shows the percentage of reports issued late for the last 5 years. The percentage of late reports has more than doubled since 1996 and increased by more than 10 percent from fiscal year 1999 through fiscal year 2000.

Table 4: Percentage of OMB Scoring Reports Issued Late

Fiscal year	1996	1997	1998	1999	2000
Percent of reports issued late	40	71.3	52.5	82.8	94

⁷This includes two fiscal year 1999 supplemental appropriations acts, which contained spending for fiscal year 2000.

**Appendix II
Compliance Issues**

OMB, using the same reasoning it did to explain its late final sequestration report, cited the volume of legislation enacted late in the year as causing the scorekeeping reports to be due during "budget crunch" season. During this time, producing the President's budget is OMB's highest priority.

Implementation Issues

In addition to the compliance issue, we found several implementation issues on which OMB and CBO differed: (1) the scoring treatment of H.R. 3425, the Miscellaneous Appropriations Act, 2000, (2) other appropriations scoring, (3) PAYGO scoring, and (4) discretionary spending cap adjustments.

Scoring of H.R. 3425, the Miscellaneous Appropriations Act, 2000

The Consolidated Appropriations Act, 2000, Public Law 106-113, November 29, 1999, (H.R. 3194) incorporated by reference several unenacted bills, including five appropriations bills for the fiscal year ending September 30, 2000. As introduced, H.R. 3194 provided fiscal year 2000 appropriations for the District of Columbia, but it was broadened in conference to incorporate by reference, in paragraphs 1000(a)(1)-(4), four other regular appropriations bills: H.R. 3421, Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2000; H.R. 3422, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2000; H.R. 3423, Department of the Interior and Related Agencies Appropriations Act, 2000; and H.R. 3424, Departments of Labor, Health, and Human Services, and Education, and Related Agencies Appropriations Act, 2000.

In addition, paragraph 1000(a)(5) incorporated by reference H.R. 3425, the Miscellaneous Appropriations Act, 2000, which dealt with miscellaneous appropriations and included many of the offsets agreed to by the administration and the congressional leadership in order to avoid a sequestration, such as shifting military and some civilian pay dates from fiscal year 2000 to fiscal year 2001, a \$3.8 billion transfer from the Federal Reserve Board to the Treasury, and a governmentwide rescission of 0.38 percent of discretionary budget authority.

Finally, paragraphs 1000(a)(6)-(9) incorporated by reference unenacted bills dealing primarily with mandatory spending, such as amendments to Medicare, authorizations for the State Department, the Milk Marketing Orders program, and the Intellectual Property and Communications Omnibus Reform Act.

**Substantial Scoring
Differences Resulted from
Different OMB and CBO
Applications of the Directed
Scoring Provision**

Subsection 1001(a) of Public Law 106-113 provided for directed scoring of several acts. It states the following.

PAYGO Adjustments. (a) Notwithstanding Rule 3 of the Budget Scorekeeping Guidelines . . . , legislation enacted . . . by reference in the paragraphs after paragraph 4 of subsection 1000(a) that would have been estimated by the Office of Management and Budget as changing direct spending or receipts under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 were it included in an Act other than an appropriations Act shall be treated as direct spending or receipts legislation as appropriate, under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, but shall be subject to subsection (b).¹

Rule 3 directs that "substantive changes to or restrictions on entitlement law or other mandatory spending law in appropriations laws will be scored against the Appropriations Committee . . .", i.e., as discretionary spending. Section 1001(a) suspends Rule 3 and directs OMB to score as PAYGO any mandatory spending or receipts provisions in the bills referred to in paragraphs 1000(a)(5)-(9), notwithstanding their inclusion in an appropriation act. Based on discussions with OMB and CBO staff, it appears that the directed scoring provision was intended to avoid a sequestration by suspending Rule 3 for the acts incorporated by paragraphs 1000(a)(6)-(9), leaving the substantial savings generated by paragraph 1000(a)(5), totaling \$9.5 billion in outlays according to OMB, to offset fiscal year 2000 discretionary spending. Both staffs attributed the inclusion of paragraph 1000(a)(5) (i.e., H.R. 3425) under the directed scorekeeping provision to a drafting error.²

In scoring H.R. 3425, CBO interpreted the scoring direction of section 1001(a) as requiring that all of H.R. 3425's provisions be scored as PAYGO,

¹Subsection (b) directs OMB to exclude the direct spending and receipts amounts from its PAYGO scorecard totals.

²Although unable to provide documentation, both OMB and CBO officials and at least one press report characterized as a drafting error the application of the directed scoring provision of section 1001(a) to paragraph 1000(a)(5). We are not aware of any contemporaneous official documentation of such a drafting error. However, section 5103, H.R. 3908, 106th Congress, introduced on March 14, 2000, would amend section 1001 of Public Law 106-113 to provide that the directed scoring applies to paragraphs after paragraph 5 and to clarify that paragraph 5 was intended to be scored as discretionary spending. The House passed this bill on March 30, 2000.

resulting in \$7.3 billion of PAYGO savings.³ On the other hand, OMB, in an attempt to reflect the budget agreement that the administration had negotiated with congressional leadership, reported that it scored any provision reported out of an appropriation committee as discretionary and scored other provisions as PAYGO. OMB's scoring of H.R. 3425 reduced discretionary outlays by \$9.5 billion and increased PAYGO spending by \$35 million for fiscal year 2000.

Most of the scoring difference between OMB and CBO for H.R. 3425 can be attributed to the difference in scoring of a \$3.8 billion transfer from the Federal Reserve Board. CBO scored the Federal Reserve Board transfer as PAYGO while OMB scored the transfer—clearly a receipts provision—as discretionary. While this may be consistent with OMB's understanding of the budget agreement that was negotiated, it is inconsistent with the scoring directions in section 1001(a) to score direct spending or receipts as PAYGO legislation.

CBO's *Final Report* for fiscal year 2000 stated that a 4 percent sequestration (across-the-board reduction) in the Overall Discretionary category would be required. CBO estimated that discretionary spending in all categories combined would exceed the outlay caps by \$16.6 billion. CBO noted however, that these amounts did not include the funding and offsets provided in H.R. 3425. The report says that without the directed scoring in section 1001(a), CBO would have scored some of H.R. 3425 as discretionary (or as offsets to discretionary spending) resulting in \$4 billion less in discretionary outlays for fiscal year 2000 and that the required sequestration would have been 3 percent. Also, a CBO official stated that absent the directed scoring provision, CBO would have scored all of H.R. 3425 except for the receipts provisions as discretionary spending. However, no sequester was required because OMB scored the effects of most of the provisions in H.R. 3425 as offsets to discretionary spending and differed with CBO on other scoring as discussed later in this report.

Both OMB and CBO provided PAYGO estimates for provisions in Public Law 106-113 in their individual scorekeeping reports but, as directed by subsection 1001(b) of Public Law 106-113, did not include the estimates in

³The Miscellaneous Appropriations Act, 2000 (paragraph 5) contained appropriations as well as direct spending provisions. Since Rule 3 deals solely with direct spending programs contained in appropriations acts, disregarding it as directed by section 1001(a) could be interpreted as having no effect on scoring the appropriations provisions in paragraph 5 as discretionary. However, this was not CBO's interpretation.

their final PAYGO totals. Subsection 1001(c) directed OMB to reset the PAYGO balances to zero on January 3, 2000, and CBO used that as its starting point for fiscal year 2001 as well.

OMB and CBO Scoring Differences for H.R. 3425

The different OMB and CBO treatments of the provisions in H.R. 3425 (i.e., PAYGO vs. discretionary) make it somewhat difficult to compare their scoring estimates. For fiscal year 2000, for the provisions it scored as discretionary, OMB estimated net savings of \$6.8 billion in budget authority and \$9.5 billion in outlays. The total fiscal year 2000 cost of the provisions OMB scored as PAYGO (international debt relief, survivor benefits, and trade adjustment assistance) is \$35 million. CBO's PAYGO estimate of H.R. 3425 shows net outlay savings of \$7.3 billion in fiscal year 2000.

Despite the difficulty in comparing discretionary and direct spending estimates, there are several provisions for which the differences between the CBO and OMB fiscal year 2000 estimates are clearly significant. The largest of those differences are described below.

Governmentwide Rescission. Section 301 of H.R. 3425 rescinded 0.38 percent of fiscal year 2000 discretionary budget authority. CBO and OMB estimated budget authority savings similarly at \$2.2 billion and \$2.4 billion respectively. However, their estimates of the effects on fiscal year 2000 outlays differed significantly. OMB estimated discretionary outlay savings of \$1.4 billion, while CBO estimated PAYGO savings of only \$814 million. Because OMB and CBO differed in their interpretation of the directed scorekeeping (discretionary vs. PAYGO), CBO scored PAYGO savings and OMB did not. The CBO PAYGO scoring report on H.R. 3425 showed outlay savings of \$2.2 billion accruing over 10 years. The OMB discretionary scoring report showed effects of the rescission for fiscal year 2000 only.

National Directory of New Hires. Section 303 of H.R. 3425 gives the Department of Education access to the Department of Health and Human Services' database on new hires to help collect defaulted student loans. OMB estimated much higher outlay savings resulting from this access than did CBO. OMB estimated this provision would reduce budget authority by \$880 million and outlays by \$879 million in fiscal year 2000. In contrast, in its PAYGO report, CBO assumed a much smaller impact from the legislation, estimating savings of only \$95 million in fiscal year 2000 and cumulative savings of \$200 million over 10 years. CBO estimates only a

small proportion of total defaulted loans will be affected by use of this database.

Emergency Supplemental Appropriations for Agriculture. Title I of H.R. 3425 provides contingent emergency appropriations for a variety of agricultural programs. CBO estimated a cost of \$456 million for fiscal year 2000. Since these were contingent emergency appropriations that had not yet been released by the President, in keeping with its then-current scoring practice, the OMB scoring report did not show a cost estimate for Title I.

Other Fiscal Year 2000 Discretionary Scoring Differences

Four appropriations acts—Military Construction (Public Law 106-52), Legislative Branch (Public Law 106-57), Treasury and General Government (Public Law 106-58), and Energy and Water Development (Public Law 106-60)—were enacted prior to the start of fiscal year 2000. Another four acts—Transportation and Related Agencies (Public Law 106-69), Veterans Affairs, Housing and Urban Development, and Independent Agencies (Public Law 106-74), Agriculture, Rural Development, Food and Drug Administration, and Related Agencies (Public Law 106-78), and Department of Defense (Public Law 106-79)—were enacted after the start of the fiscal year. The five remaining regular appropriations acts were combined into the Consolidated Appropriations Act, 2000 (Public Law 106-113).⁴

Different Estimates of Fiscal Year 2000 Appropriations and Spending Caps

The CBO and OMB final sequestration reports differed on the need for sequestration in fiscal year 2000. As shown in table 5, CBO estimated that budget authority and outlays for the Overall Discretionary category and outlays for the Highway and Mass Transit categories exceeded the spending caps. OMB estimated budget authority in all categories and outlays in all categories except the Violent Crime Reduction category as below or meeting the caps.⁵ Since OMB's estimates and spending caps are controlling for purposes of sequestration, a sequester was not triggered.

⁴As discussed earlier, the Consolidated Appropriations Act, 2000 also incorporated by reference five other bills. Both CBO and OMB treated four of the bills as direct spending. One bill (H.R. 3425, the Miscellaneous Appropriations Act) was treated as direct spending by CBO, while OMB treated part of the bill as discretionary spending and part as direct spending. (See previous section on H.R. 3425 in this appendix for more information.)

⁵Although OMB estimated outlays in the Violent Crime Reduction category as exceeding the cap, it will make use of the special outlay allowance provided under section 251(b)(2) to adjust the limit to cover the breach.

The difference between the CBO and OMB estimates is accounted for by many scorekeeping differences; the largest of these are detailed in the following discussion.

Table 5: CBO and OMB Estimates of Fiscal Year 2000 Appropriations Compared to Adjusted Caps

Dollars in millions

	OMB		CBO	
	Budget authority	Outlays	Budget authority	Outlays
Overall Discretionary				
Enacted appropriations	\$ 562,045	\$ 561,407	\$ 570,440	\$ 577,664
End-of-session limits	563,602	564,870	563,714	562,429
Difference	-1,558	-3,463	6,726	15,235
Violent Crime Reduction				
Enacted appropriations	4,500	6,344	4,500	5,548
End-of-session limits	4,500	6,344	4,500	5,554
Difference	0	0	0	-6
Highway				
Enacted appropriations		24,574		25,344
End-of-session limits		24,574		24,574
Difference		0		770
Mass Transit				
Enacted appropriations		4,117		4,685
End-of-session limits		4,117		4,117
Difference		0		568
Total for All Spending Categories				
Total enacted appropriations	\$ 566,545	\$ 596,442	\$ 574,940	\$ 613,241
End-of-session limits	568,102	599,905	568,214	596,674
Difference	-1,558	-3,463	6,726	16,567

Note: Highway and Mass Transit Categories were created by TEA-21 and include outlay caps only.

Scoring Differences

Although there were many scorekeeping differences between OMB and CBO, most of the differences were relatively small. We identified 456 scoring differences between CBO and OMB in either budget authority or outlays. Of the 456 differences, nearly 75 percent were less than \$100

million, and less than 7 percent of the differences were greater than \$500 million.

Of the 31 differences greater than \$500 million, 19 were due to long-standing differences in the way OMB and CBO treat contingent emergencies. CBO scores contingent emergency appropriations when the Congress enacts them. OMB traditionally has waited to score contingent emergency appropriations until the President has designated them as emergency requirements and the funds have been released.⁶ Since the scorekeeping differences due to the treatment of contingent emergencies reflect differences in timing, we have not included them in the discussion below. The provisions with the remaining 12 largest differences in budget authority, outlays, or both are shown in table 6.

⁶In OMB's *Preview Report*, issued February 7, 2000, OMB reported that it plans to change its scoring of budget authority for contingent emergency appropriations to be consistent with congressional scoring practice. See discussion on Changes in OMB's Budget Scoring in appendix I.

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Table 6: Provisions with More than \$500 Million Difference Between OMB and CBO Estimates^a

Dollars in millions

		Difference between OMB and CBO estimates (OMB-CBO)			
		Fiscal year 1999		Fiscal year 2000	
Act	Account	Budget authority	Outlays	Budget authority	Outlays
Transportation and Related Agencies Appropriations Act, 2000	Transit Budget Authority	b	b	\$ -1,159	\$ 0
Transportation and Related Agencies Appropriations Act, 2000	Highway and Transit Category Outlays	b	b	0	-1,314
Consolidated Appropriations Act, 2000	State and Local Law Enforcement Assistance, Department of Justice	b	b	0	564
Department of Defense Appropriations Act, FY2000	Spectrum Auction Receipts	b	b	-2,600	-2,600
Department of Defense Appropriations Act, FY2000	Operations and Maintenance, Navy	b	b	0	-1,285
Department of Defense Appropriations Act, FY2000	Operations and Maintenance, Air Force	b	b	0	-1,011
Department of Defense Appropriations Act, FY2000	Shipbuilding and Conversion, Navy	b	b	0	-628
Department of Defense Appropriations Act, FY2000	Aircraft Procurement, Air Force	b	b	0	-517
Department of Defense Appropriations Act, FY2000	Working Capital Fund	b	b	0	-783
Emergency Supplemental Appropriations Act, FY1999	Overseas Contingency Operations Transfer Fund	0	1,231	0	1,017

^aDifferences due to the treatment of contingent emergencies are not included.

^bNo budgetary impact in 1999.

Notes: Negative numbers indicate provisions where CBO estimates were higher than OMB. Positive numbers indicate provisions where CBO estimates were lower than OMB.

Sources: OMB and CBO.

For these provisions, the differences between the OMB and CBO estimates can be grouped into the following categories:

- **DCA categorization difference:** The Transportation Equity Act of the 21st Century (TEA-21) amended the BEA to create separate outlay caps for highway and mass transit spending. However, the Highway and Mass Transit spending categories do not have budget authority limits. OMB and CBO used different treatments of the budget authority in the Mass

Transit category in their final sequestration reports. CBO did not include approximately \$1.2 billion in budget authority for mass transit programs in its estimates of discretionary budget authority contained in its report. However, CBO does report budget authority for mass transit programs when it scores appropriation bills in order to keep an accurate record of the amount of budget authority provided for these programs.⁷ In its report, OMB categorized the Mass Transit budget authority as mandatory spending to ensure that its discretionary totals did not overstate budget authority. Although OMB and CBO treated the Mass Transit budget authority differently for their scoring reports, neither *Final Report* scored it against the discretionary budget authority spending caps.

- **Difference in the Overall Discretionary spending category due to differences in estimates of Highway and Mass Transit spending:** CBO estimated that outlays in the Highway and Mass Transit categories will exceed the spending caps by \$1.3 billion. Pursuant to DCA, CBO scores outlays exceeding the caps against the Overall Discretionary category. CBO's fiscal year 2000 *Final Report* shows outlays in the Highway category exceeding the cap by \$770 million and outlays in the Mass Transit category exceeding the cap by \$568 million. OMB estimated that Highway and Mass Transit outlays would not exceed the caps, and thus, there is no deduction from the Overall Discretionary category. According to an OMB official, the \$770 million difference in the Highway category is attributable to different assumptions of the spendout rates for obligated and unobligated balances in the Federal Aid to Highways account. The official thought that different spendout rate assumptions in the Discretionary Grants account could also explain the \$568 million difference in the Mass Transit category.
- **Different outlay rate estimates:** Differences in the State and Local Law Enforcement Assistance account result from OMB assuming \$564 million more in outlays in fiscal year 2000 from previously available budget authority than CBO assumed. Similarly, the differences in the OMB and CBO estimates for Navy operations and maintenance, Air Force operations and maintenance, Navy shipbuilding and conversion, Air Force aircraft procurement, and the Working Capital Fund are due to differences in estimates of outlay rates. In these five accounts, OMB assumes slower rates for fiscal year 2000 than does CBO. In the case of

⁷CBO's scoring report for the Department of Transportation and Related Agencies shows two budget authority totals—one including the \$1.2 billion estimate for Mass Transit and one total excluding the estimate.

the Overseas Contingency Operations Transfer Account, CBO assumes a slower spendout rate than does OMB in fiscal year 1999 (43 percent versus 74 percent) and a faster rate in fiscal year 2000 (46 percent versus 20 percent).

- **Different rate of receipts estimates:** For Spectrum Auction Receipts, OMB estimates that legislation to speed the collection of spectrum auction proceeds will net \$2.6 billion in accelerated receipts, while CBO assumes that the legislative changes will not result in increased receipts in fiscal year 2000.

PAYGO Scoring Issues

In its *Final Report*, CBO reported that PAYGO legislation enacted through the end of the first session of the 106th Congress resulted in a net spending increase in fiscal year 1999 of \$58 million and produced net savings of \$3,179 million for fiscal year 2000. Based on these estimates, CBO concluded that no sequestration of mandatory spending for fiscal year 2000 was required. OMB, in its *Final Report*, estimated that the same legislation produced a net increase of \$58 million for 1999 and a net savings for 2000 of \$3,072 million.⁸ OMB also concluded that, based on these estimates, no PAYGO sequester was required.

As directed by section 1001(b) of the Consolidated Appropriations Act, 2000 (Public Law 106-113), the final PAYGO scorecard numbers of both CBO and OMB did not include any estimates of changes in direct spending or receipts that result from the enactment of that legislation. Section 1001(c) of that act further directs OMB to remove from its scorecard any PAYGO balances on January 3, 2000. OMB's *Preview Report* issued on February 7, 2000, showed zero PAYGO balances for all years. According to CBO estimates, sections 1001(b) and (c) of Public Law 106-113 eliminated over \$35 billion in costs from the PAYGO scorecard for fiscal years 2001 through 2004, primarily due to the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 and the Ticket to Work and Work Incentives Improvement Act of 1999.

During the first session of the 106th Congress, only 13 pieces of PAYGO legislation with estimated budgetary impact greater than \$500,000 were

⁸As required by the DCA, the fiscal year 1999 total reflects only that legislation added to the scorecard after the 1999 *Final Report* was issued. Under DCA, the fiscal year 1999 and 2000 numbers were combined to determine whether sequestration was required.

enacted.⁹ We analyzed those scorekeeping reports for which OMB and CBO estimates differed by \$500 million or more either in any single year or over the 5-year period 2000 through 2004. Only three pieces of legislation met this criterion: (1) the Consolidated Appropriations Act, 2000, Public Law 106-113, (2) the Veterans Millenium Health Care and Benefits Act, Public Law 106-117, and (3) the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170. They are discussed below.

**Consolidated
Appropriations Act, 2000**

As discussed earlier, the Consolidated Appropriations Act, 2000, Public Law 106-113, incorporated five separate bills on the remaining regular appropriations acts for fiscal year 2000 into a single measure, H.R. 3194. In addition to the regular appropriations acts, the consolidated act included five other separate measures including (1) miscellaneous appropriations (H.R. 3425), (2) amendments to Medicare and related programs (H.R. 3426), (3) authorizations for the State Department (H.R. 3427), (4) Federal Milk Marketing Orders program, (H.R. 3428), and (5) the Intellectual Property and Communications Omnibus Reform Act of 1999 (S. 1948). Both OMB and CBO prepared PAYGO scorekeeping reports on this legislation, but as directed by section 1001(b), both excluded the PAYGO amounts from the PAYGO scorecard totals.

As shown in table 7, there were significant differences between OMB and CBO scoring over the 5-year cost of the legislation. Although OMB and CBO differed by only about \$900 million over the 5-year estimate, the estimates in the years 2000 and 2001 differed by \$8.1 billion and \$6.7 billion respectively.

⁹OMB announced in its *Preview Report* for fiscal year 2000 that it was no longer issuing PAYGO reports on legislation where OMB and CBO estimate zero or negligible budget impact, i.e., less than \$500,000.

Table 7: Comparison of OMB and CBO PAYGO Scoring for Consolidated Appropriations Act

Dollars in millions						
Fiscal year	2000	2001	2002	2003	2004	Total
OMB	\$ 1,552	\$ 5,504	\$ 4,581	\$ 2,268	\$ 1,288	\$ 15,193
CBO	-6,563	12,244	3,916	2,786	1,943	14,326
Difference (OMB-CBO)	\$ 8,115	\$ -6,740	\$ 665	\$ -518	\$ -655	\$ 867

The major differences stemmed from two factors: scoring of miscellaneous appropriations in H.R. 3425 and Medicare related changes in H.R. 3426 that were incorporated into this legislation by reference. Most (\$7.3 billion) of the scoring difference is the result of H.R. 3425 as discussed in the previous section.

H.R. 3426, the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, mitigated the impact of some Medicare provisions in the Balanced Budget Act of 1997 on health care providers and included a number of changes to Medicaid and State Children's Health Insurance Program. Differences in OMB and CBO scoring of this legislation total almost \$1 billion over the 5-year period 2000 through 2004. As shown in table 8, the annual differences ranged from \$300 million to \$700 million per year.

Table 8: Comparison of OMB and CBO PAYGO Scoring for Medicare, Medicaid, and SCHIP

Dollars in millions						
Fiscal year	2000	2001	2002	2003	2004	Total
OMB	\$ 1,500	\$ 5,500	\$ 4,600	\$ 2,200	\$ 1,300	\$ 15,100
CBO	1,161	5,800	4,200	2,900	2,000	16,061
Difference (OMB-CBO)	\$ 339	\$ -300	\$ 400	\$ -700	\$ -700	\$ -961

Most of this difference is related to a Medicare provision on implementation of a new prospective payment system for hospital outpatient services. CBO scored the provision while OMB believes that the language merely clarifies congressional intent in previous law and

therefore does not score any costs for it. Had OMB scored its estimate for congressional intent, its estimate for the cost of the legislation would have been about \$4.9 billion higher over the 5-year period. This difference is partially offset by lower CBO costing of other health entitlement provisions resulting from the use of different baselines and estimating models.

Veterans Millennium Health Care and Benefits Act

The Veterans Millennium Health Care and Benefits Act, Public Law 106-117, expanded several veterans health care benefits; revised and extended veterans programs for housing, education, and compensation benefits; authorized new medical facility projects and leases; and provided buyout authority for Department of Veterans Affairs (VA) employees as well as other miscellaneous provisions.

CBO estimated that the provisions in the act would cost about \$1,179 million over the 5-year period 2000–2004, whereas OMB scored the legislation to cost \$96 million over the same period—a difference of \$1,083 million. Table 9 shows the annual differences between OMB and CBO scoring for this legislation.

Table 9: Comparison of OMB and CBO PAYGO Scoring for Veterans Millennium Health Care and Benefits Act

Dollars in millions						
Fiscal year	2000	2001	2002	2003	2004	Total
OMB	\$ 10	\$ 12	\$ 28	\$ 15	\$ 31	\$ 96
CBO	-4	289	343	414	137	1,179
Difference (OMB-CBO)	\$ 14	\$ -277	\$ -315	\$ -399	\$ -106	\$ -1,083

The principal difference between OMB and CBO, amounting to \$1,195 million over the 5-year period, related to the scoring of the VA costs for extended nursing home care for veterans who are 70 percent or more service-connected disabled. Absent this provision, the scoring differences between OMB and CBO were only \$112 million over the period. The particular provision of law requiring nursing home care was inserted at the House and Senate conference on the bill. This new section, section 101(a) of the act, amended existing legislation by adding a new section "Required nursing home care," which provided that "The Secretary shall provide nursing home care which the Secretary determines is needed (1) to any

veteran in need of such care for a service-connected disability, and (2) to any veteran who is in need of such care and who has a service-connected disability rated at 70 percent or more." Section 101(c) added another section, "Extended care services," which provided that "The Secretary (subject to 1710(a)(4) of this title and subsection (c) of this section) shall operate and maintain a program to provide extended care services to eligible veterans in accordance with this section." The difference between the two sections and the CBO and OMB scoring stems from the reference to 1710(a)(4) in the extended care services section which makes programs subject to annual appropriations. The new section on nursing home care did not contain such a reference. OMB and CBO interpreted this omission differently.

CBO scored the nursing home provision as direct spending authority. CBO stated that there is some doubt as to whether the Congress intended this since all other components of veterans medical care are subject to appropriation. OMB did not score the nursing home provision as having additional cost because it believed that the requirement merely directed VA to give a higher priority for nursing home care to these veterans. According to OMB, VA's general counsel expressed the opinion that the nursing home care costs are to be funded from VA's medical care account which is subject to annual appropriations.

**Ticket to Work and Work
Incentives Improvement Act
of 1999**

The Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170, among other things altered cash and health care benefits for people with disabilities; tightened restrictions on payment of Social Security benefits to prisoners; gave certain clergy members another opportunity to enroll in the Social Security system; and amended existing tax laws and extended numerous tax provisions that have recently expired or are about to expire.

As shown in table 10, OMB scored the 5-year cost of this act to be \$17.9 billion, or \$2.4 billion higher than CBO's estimate of \$15.5 billion.

Table 10: Comparison of OMB and CBO PAYGO Scoring for Ticket to Work and Work Incentives Improvement Act of 1999

Dollars in millions						
Fiscal year	2000	2001	2002	2003	2004	Total
OMB	\$ -80	\$ 4,874	\$ 7,550	\$ 2,933	\$ 2,628	\$ 17,905
CBO	-97	2,899	8,089	2,404	2,210	15,505
Difference (OMB-CBO)	\$ 17	\$ 1,975	\$ -539	\$ 529	\$ 418	\$ 2,400

The most significant differences between OMB and CBO scoring of this act related to the estimates for the tax extension provisions. OMB uses estimates prepared by the Department of the Treasury while CBO uses estimates prepared by the Joint Committee on Taxation. Neither OMB nor CBO changes the numbers provided by the respective organizations. For this act, the 5-year estimate for revenue losses used by OMB was \$2.5 billion greater than that used by CBO. The primary difference in the estimates for tax extensions was identified as the result of different baselines and estimation models related to the research and experimentation tax credit and Subpart F for active financing income. Specifically, the Joint Committee on Taxation uses a model that assumes corporations will take more time initially to use the tax incentives. Thus, CBO's estimates would show revenue losses lower than OMB's in the 5-year window. However, over a longer period, such as over 10 years, the estimates would become similar.

Cap Adjustments

Section 251(b) of DCA requires that the discretionary spending limits be adjusted to account for (1) changes in concepts and definitions, (2) emergency appropriations, (3) an allowance for the International Monetary Fund, (4) international arrearages, (5) earned income tax credit compliance initiative, and (6) spending for continuing disability reviews by the Social Security Administration. While both CBO and OMB are required to calculate how much the spending limits should be adjusted, OMB's adjustments control for the purposes of budget enforcement, such as determining whether enacted appropriations fall within the spending limits, whether a sequestration is required, and, if so, how much. CBO's cap adjustment estimates are advisory. Consequently, when CBO adjusts the discretionary spending caps in each of its sequestration reports, it first

adopts OMB's figures from the previous sequestration report.¹⁰ CBO then adjusts the OMB figures for its estimates for enacted legislation or other activity since the previous sequestration report.

In its *Final Report* for fiscal year 2000, CBO adjusted the spending caps for the Overall Discretionary category, but no adjustments were made for any other spending category. OMB adjusted both the Overall Discretionary category spending caps and the Violent Crime Reduction cap. Overall, in their final sequestration reports, CBO's estimates of the 2000 caps are \$112 million higher than OMB's for budget authority and \$3,231 million lower for outlays. Table 11 shows the spending cap adjustments made by OMB and CBO in the final sequestration reports.

¹⁰In its sequestration reports, CBO shows its own estimates of the discretionary spending caps from the previous sequestration report and shows the difference between those estimates and OMB's estimates as an adjustment.

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Table 11: Adjustments to the Discretionary Spending Caps in the Final Sequestration Reports

Dollars in millions

	Fiscal year 2000					
	Budget authority			Outlays		
	OMB	CBO	Difference	OMB	CBO	Difference
Violent Crime Reduction Category						
Special Outlay Allowance	0	0	0	\$ 790	0	\$ 790
Overall Discretionary Spending Category						
Emergency appropriations enacted and released since August update report	\$ 29,772	\$ 29,881	\$ -109	\$ 22,777	\$ 20,331	\$ 2,446
Continuing disability reviews	405	405	0	373	353	20
Allowance for international arrearages	426	428	-2	0	13	-13
EITC compliance initiatives	144	144	0	144	146	-2
Adoption assistance	20	20	0	2	12	-10
Cap increase ^a	1,065	1,065	0	0	0	0
Adjustments for the Overall Discretionary Spending Category	\$ 31,832	\$ 31,943	\$ -111	\$ 23,296	\$ 20,855	\$ 2,441
Total Adjustments to Discretionary Spending	\$ 31,832	\$ 31,943	\$ -111	\$ 24,086	\$ 20,855	\$ 3,231

^aThe cap increase adjustment in the Overall Discretionary Spending category refers to a provision in Public Law 106-113 that raised the budget authority cap for fiscal year 2000 by 0.2 percent.

Note: Although, as shown above, the total of the differences between CBO and OMB adjustments in the Overall Discretionary Spending category add to \$111 million, OMB's final sequestration report shows the total difference to be \$112 million. This difference could be due to rounding. The OMB number has been used elsewhere in this report.

Sources: CBO and OMB.

As the table shows, almost all of the increase in the fiscal year 2000 discretionary budget authority and outlay caps is due to adjustments for emergency appropriations. Nearly all of the difference in the adjustments to budget authority is due to the different treatments of H.R. 3425. OMB's budget authority adjustment for emergency spending includes a reduction of \$101 million pursuant to the provision in H.R. 3425 which rescinds 0.38 percent of the discretionary budget authority provided for fiscal year 2000. CBO's adjustment does not include any such reduction since it scored H.R. 3425 as direct spending. Of the nearly \$2.5 billion difference in the adjustments for outlays from emergency spending, OMB explained that \$735 million was due to OMB having higher estimates of fiscal year 2000

outlays for two items.¹¹ OMB offered no explanation for the remaining difference in emergency appropriations outlay estimates.

Also, there is a \$790 million difference in estimates of fiscal year 2000 outlays in the Violent Crime Reduction category. OMB estimates spending in that category to be within the budget authority limit but exceeding the outlay limit by \$790 million. OMB used the special outlay allowance provided under section 251(b)(2) of DCA to cover the breach. This allows for an adjustment of the outlay cap when outlays are estimated to exceed the discretionary spending limit as long as new budget authority does not exceed its limit within the same spending category. The adjustment may not exceed 0.5 percent of the total adjustment for discretionary spending limits for outlays.

¹¹The two items were Operations and Maintenance for the Department of Defense and the Department of Health and Human Services' Head Start program.

Emergency Spending

In accordance with the Deficit Control Act, the Congress and the President may designate appropriations as "emergency spending" and as such, those appropriations are in effect exempt from the discretionary spending caps. In practice, when spending is designated as an emergency, the discretionary caps are increased by the amount of the associated budget authority and outlays. As was true for fiscal year 1999, the amount designated as emergency spending for fiscal year 2000 is significantly higher than in most past years, the proportion of emergency spending offset was much lower than in the past, and some new programs were designated as emergencies in fiscal years 1999 and 2000.

In the 10 years since the enactment of the Budget Enforcement Act in 1990, fiscal year 2000's \$30.8 billion emergency budget authority¹ has been surpassed only twice: fiscal year 1999's \$34.4 billion and fiscal year 1991's \$45.8 billion, which included funding for Operation Desert Storm. (See table 12.) The \$21.8 billion appropriated in fiscal year 2000 for nondefense-related items is the largest amount of emergency appropriations for nondefense purposes since BEA was enacted. Only 2 other fiscal years had more than \$10 billion in nondefense emergency budget authority—1994, which included funding associated with the Northridge earthquake, and 1999.

Table 12: Emergency Budget Authority, Fiscal Years 1991-2000

Dollars in millions

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Defense	\$ 44,387	\$ 7,527	\$ 642	\$ 1,509	\$ 2,529	\$ 982	\$ 2,077	\$ 2,861	\$ 16,845	\$ 9,038
Nondefense	1,459	8,641	5,387	12,346	5,406	4,069	7,459	3,042	17,511	21,802
Total	\$ 45,846	\$ 16,168	\$ 6,029	\$ 13,855	\$ 7,935	\$ 5,051	\$ 9,536	\$ 5,903	\$ 34,356	\$ 30,840

Note: Data for fiscal years 1991 through 1999 are current as of June 8, 1999, and data for fiscal year 2000 are current as of December 2, 1999.

Source: CBO.

¹The amount of emergency budget authority for fiscal year 2000 may increase if additional emergency spending designations are made during the year. After regular appropriations acts for a given fiscal year are enacted, additional appropriations are commonly made in supplemental spending acts.

Most of the nearly \$31 billion in emergency budget authority enacted for fiscal year 2000 was not offset with reductions in other discretionary spending. While emergency spending is effectively exempt from the spending caps, between 1994 and 1997 the Congress typically offset some of the supplemental emergency appropriations with cuts in other programs. For example, the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105-174) enacted on May 1, 1998, included \$5.4 billion in emergency appropriations and \$2.6 billion in reductions in other programs. In contrast, the fiscal year 1999 Emergency Supplemental Appropriations Act (Public Law 106-31) enacted on May 21, 1999, included nearly \$15 billion in emergency supplemental appropriations for fiscal years 1999 and 2000. However, the law included only about \$2.0 billion in offsetting rescissions. The Consolidated Appropriations Act, 2000, which provided over \$10 billion in emergency spending, included offsetting reductions in outlays and increases in revenues totaling about \$6 billion.² It should be noted, however, that \$3.6 billion of the outlay reductions were due to shifting pay dates for military and some civilian personnel so that \$3.6 billion in salary outlays will be charged to fiscal year 2001 instead of fiscal year 2000. Also, approximately \$3.8 billion in additional revenue is due to the transfer of that amount from the Federal Reserve Board to the Treasury during fiscal year 2000. CBO has reported that it expects an offsetting reduction of the same amount in the Federal Reserve Board's fiscal year 2001 payments to the Treasury as the board restores its financial balance to its desired level.³

The Deficit Control Act sets forth no criteria to use in determining what constitutes emergency spending. It imposes only the following definition: "any appropriations . . . that the President designates as emergency requirements and that the Congress so designates in statute." Operation Desert Storm and peacekeeping operations in Kosovo are examples of defense-related emergency spending. Nondefense emergency spending primarily occurs in response to natural disasters such as hurricanes and earthquakes. However, as discussed in our compliance report for 1999,⁴

²The estimates cited in this section are CBO estimates.

³While CBO treated these provisions as mandatory (see section on H.R. 3425 in appendix III for more information) for sequestration purposes, it reclassified many of the effects as discretionary when recalculating the January 2000 baseline.

⁴*Budget Issues: Budget Enforcement Compliance Report* (GAO/AIMD-99-100, April 1, 1999); see also *Budgeting for Emergencies: State Practices and Federal Implications* (GAO/AIMD-99-250, September 30, 1999).

Appendix IV
Emergency Spending

emergency appropriations addressed broader purposes than in most prior years, including for example, appropriations for operation and maintenance of information systems and for the 2000 Census. As in fiscal year 1999, a wide variety of programs have been designated as emergencies in fiscal year 2000. Table 13 shows the CBO estimates for appropriations that were designated as emergencies for fiscal year 2000.

Table 13: Emergency Spending, Fiscal Year 2000

Dollars in millions

Appropriations Act	Program(s)	Budget authority for fiscal year 2000
1999 Emergency Supplemental Appropriations Act	Department of Defense: Military Personnel	\$ 1,838
1999 Emergency Supplemental Appropriations Act	Department of Agriculture: Commodity Credit Corporation Fund	35
1999 Emergency Supplemental Appropriations Act	Denali Commission	8
Consolidated Appropriations Act, 2000	Commerce: 2000 Census	4,476
Consolidated Appropriations Act, 2000	Foreign Operations: Foreign Military Financing	1,375
Consolidated Appropriations Act, 2000	Foreign Operations: Economic Support	450
Consolidated Appropriations Act, 2000	Department of Health and Human Services: Refugee and Entrant Assistance	427
Consolidated Appropriations Act, 2000	Department of Health and Human Services: Low Income Home Energy Assistance	1,400
Consolidated Appropriations Act, 2000	Department of Health and Human Services: Children and Families Services	1,700
Consolidated Appropriations Act, 2000	Department of Health and Human Services: General Departmental Management	584
Consolidated Appropriations Act, 2000	Department of the Interior: Wildland Fire Management	90
Consolidated Appropriations Act, 2000	Department of the Interior: United Mine Workers of America Combined Benefits Fund	68
Consolidated Appropriations Act, 2000	Department of Education: Student Financial Assistance	10
Veterans Affairs, Housing and Urban Development, and Independent Agencies	FEMA – Disaster Relief	2,480
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies	Federal Crop Insurance	250
Agriculture, Rural Development, Food and Drug Administration, and Related Agencies	Emergency Assistance – Department of Agriculture	8,449
Department of Defense	Operations and Maintenance	7,200
Total		\$ 30,840

Source: CBO.

The debate that began during the 105th Congress over what constitutes emergency spending continued into the 106th Congress. Prior to enactment of fiscal year 2000 regular appropriations, several proposals were introduced to change the treatment of emergency spending.⁵ Those proposals ranged from requiring committee reports to include justifications for emergency spending provisions to including some emergency spending within the spending caps. After enactment of the fiscal year 2000 appropriations, the Congress continued to propose changes to the treatment of emergency spending. The budget resolution for fiscal year 2001 (H. Con. Res. 290), passed by the House and Senate on April 13, 2000, included language requiring committee reports that propose emergency spending to analyze whether the proposed expenditure or tax change meets the following criteria:

- necessary, essential, or vital (not merely useful or beneficial);
- sudden, quickly coming into being, and not building up over time;
- an urgent, pressing, and compelling need requiring immediate action;
- unforeseen, unpredictable, and unanticipated; and
- not permanent, temporary in nature.⁶

In addition, the resolution introduced a point of order in the Senate against designating nondefense spending as an emergency. The point of order may be waived only with an affirmative vote of at least 60. There was a similar point of order in the fiscal year 2000 budget resolution, however it was raised only once, against relief funding for Hurricane Mitch in the May 2000 supplemental appropriations bill.

⁵See, for example, Senate Resolution 5, S. 93, H.R. 853, and House Concurrent Resolution 290.

⁶These criteria are similar to those proposed in the Budget Enforcement Act of 1999 (S. 93) and those proposed by OMB in 1991.

Appendix IV
Emergency Spending

Additional information on issues related to emergency spending can be found in the CBO report *Emergency Spending Under the Budget Enforcement Act*, issued in December 1998, the update to that report, issued in June 1999, the GAO reports *Budgeting for Emergencies: State Practices and Federal Implications*⁷ and *Emergency Criteria: How Five States Budget for Uncertainty*.⁸

⁷*Budgeting For Emergencies: State Practices and Federal Implications* (GAO/AIMD-99-250, September 30, 1999).

⁸*Emergency Criteria: How Five States Budget for Uncertainty* (GAO/AIMD-99-156R, Emergency Criteria).

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Appendix V
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